

MINUTES

MONTANA SENATE 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION AND CULTURAL RESOURCES

Call to Order: By **CHAIRMAN DON RYAN**, on March 4, 2005 at 3:00 P.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Don Ryan, Chairman (D)
Sen. Gregory D. Barkus (R)
Sen. Jerry W. Black (R)
Sen. Kim Gillan (D)
Sen. Bob Hawks (D)
Sen. Sam Kitzenberg (R)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Bob Story Jr. (R)

Members Excused: Sen. Jim Elliott (D)

Members Absent: None.

Staff Present: Connie Erickson, Legislative Branch
Lois O'Connor, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: HB 317, 3/4/2005; HB 397, 3/4/2005;
HB 574, 3/4/2005
Executive Action: HB 397

{Tape: 1; Side: A; Time Counter: 1.5}

HEARING ON HB 317

Opening Statement by Sponsor:

REP. ROBIN HAMILTON (D), HD 92, said that school boards meet all during the year, and under current law, the meeting place must be a public building. School boards are more sophisticated than they used to be. They team build, hold retreats, and sometimes, the public does not own appropriate buildings or buildings that are air conditioned. No other business could take place unless the meeting were properly and publically notified.

{Tape: 1; Side: A; Time Counter: 3.1}

Proponents' Testimony:

Jim Clark, Superintendent, Missoula Public Schools, said that he would like to take his board to a different setting besides one of its publically owned buildings and to have the ability to bring in larger groups of people. He supported HB 317.

Bob Vogel, MT School Boards Association (MTSBA), said that HB 317 does not change any of the districts' responsibility to publically notice a meeting even if it is in another location, and the public has the ability to attend even if the meeting is not held in a publically owned building. He supported HB 317 because it promoted good public relations.

Darrel Rud, School Administrators of Montana (SAM), said he sees the word "flexibility" in HB 317. School boards need different opportunities to interact with the public, including those who have children in school and those who do not.

Opponents' Testimony: None.

Informational Testimony: None.

{Tape: 1; Side: A; Time Counter: 6.4}

Questions from Committee Members and Responses:

SEN. JEFF MANGAN, SD 12, asked what happens if a majority of the school trustees want to hold a meeting in a church. **REP. HAMILTON** was unsure whether it would be legal and referred the question to **Mr. Clark** who said that currently, there is no restriction on holding a meeting in a church. He added that he would encourage his people to find a spot that would not potentially create a

problem within the community. This is an issue that could create a problem. **SEN. MANGAN** said that one of the reasons that publically owned may have been put into law in the first place was for reasons such as this. He asked if **REP. HAMILTON** would be amenable to an amendment. **REP. HAMILTON** said that it was not the bills intention to create problems and, if the Committee would find the appropriate sideboards to ensure that it does not become a problem, he would support it.

SEN. ROBERT STORY, SD 30, asked if school boards had arrangements with churches in some areas to use their facilities, such as for evacuations. **Mr. Vogel** said there are not many, but there are a few communities throughout the state that do have those relationships with local churches. He added that HB 317 made no prohibition from churches in statute. It just makes the change to "publically accessible buildings".

SEN. DON RYAN, SD 10, said that when he taught school in Outlook, there were only two publically owned buildings. He like HB 317 as written.

{Tape: 1; Side: A; Time Counter: 11.4}

Closing by Sponsor:

REP. HAMILTON said that HB 317 is a smart, common sense bill that will give more flexibility to school boards. If the Committee feels that amendments are appropriate, he would not object, but he was unsure whether they were necessary.

{Tape: 1; Side: A; Time Counter: 12.2}

HEARING ON HB 397

Opening Statement by Sponsor:

REP. TIM DOWELL (D), HD 8, said that for years, Flathead High School has been the largest high school in the state. This year, Kalispell passed a bond issue for the construction for a second high school and ran into a gap in current law concerning the proper structure of a board of trustees for a high school district.

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Proponents' Testimony:

Joe McCracken, Kalispell High School District, provided written comments in support of HB 397.

EXHIBIT(eds48a01)***{Tape: 1; Side: A; Time Counter: 16.1}***

Bob Vogel, MTSBA, emphasized that there is a gap in statute, and HB 397 is not just a Kalispell bill. If there were another event like this that took place in Helena, for example, that wanted to build a high school outside of Helena between Helena and East Helena, they may not know the makeup of the governing board. There needs to be clarification in statute, and HB 397 is a good approach to do so. He added that the gap exists because of the boundary commission being repealed in 1997.

Jeff Hindoien, Attorney, Kalispell School District, spoke in support of HB 397.

{Tape: 1; Side: A; Time Counter: 17.8}

Rod Svee, Superintendent of Schools, Billings, said that he did not realize that the gap had been created in 1997. He believed that the gap creates issues for current law relative to representative zones for school district trustees by separating them by population. He supported HB 397.

Opponents' Testimony: None.

Informational Testimony: None.

{Tape: 1; Side: A; Time Counter: 19.1}**Questions from Committee Members and Responses:**

SEN. GREGORY BARKUS, SD 4, asked if countywide school districts help this problem. **Mr. McCracken** said yes, depending on the laws that go along with them and how they are written.

SEN. STORY asked if when Billings was contemplating its new school on the West end, was it still in the elementary district or was it in a rural elementary districts. **Mr. Svee** said that particular location is in the Billings Elementary District. **SEN. STORY** asked if Billings decided to build a high school in Eldergrove, for example, how would it affect how the trustees were elected under its single district membership. **Mr. Svee** was unsure about the election of the high school trustees because they are elected by taxable value. The only trustee that were put into representative zones by population are elementary trustees. He was unsure of the implications.

{Tape: 1; Side: A; Time Counter: 22.7}

SEN. STORY asked without the passage of HB 397, what would Kalispell do. **Mr. McCracken** said that Kalispell will have to find someone to govern the school because there is nothing in statute to tell them who is to govern. The Flathead High School District does not have the right to govern the new school. **SEN. STORY** commented that Kalispell would be putting a building up in an elementary district which, if not for the moratorium on high school districts, could start a high school district because they have a facility. **Mr. McCracken** said that the question might be why did Kalispell pick that particular area to build the high school.

{Tape: 1; Side: A; Time Counter: 25.2}

Closing by Sponsor:

REP. DOWELL urged the Committee's support for HB 397.

{Tape: 1; Side: A; Time Counter: 26.3}

HEARING ON HB 574

Opening Statement by Sponsor:

REP. GARY BRANAE (D), HD 54, said that under current law, the passage of a bond issue depends upon a majority vote of the people and the percentage of the elected eligible voters who participated in the election. For example, if more than 40% of the elected voters in a district participate in the election and if a majority of those voters vote for the bond issue, it will pass. However, if the number of voters who participate in the election is between 30% and 40%, in order for the issue to pass, there must be a 60% majority of those voters approving the measure. Beyond that, if less than 30% of eligible voters participate in the election, the issue fails no matter how many people voted for it.

REP. BRANAE pointed out that under current statute, cities, if they want to pass a bond issue, do it simply by a majority vote. The same thing happens in a county bond issues. School districts are treated differently than other governmental entities, and HB 574 is a fairness bill.

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Proponents' Testimony:

Rod Svee, Superintendent of Schools, Billings, said that two years ago Billings had two bond issues--one for the school district and one for the city. He was asked why the city could pass its bond issue with a majority vote and the school district was subject to all of the percentages of votes. He could not answer. He said it does not make sense that the same voters were unable to treat issues the same way. There should only be one set of rules for both.

Gary Amestoy, Sidney Public Schools, said that the Sidney Public Schools support HB 574 because they believe that the present system for determining whether a school bond proposition is approved or fails is balanced more in favor of those members of the electorate that do not bother to vote as compared to those members of the electorate that do vote, such as what happened to a bond proposition held in Sidney that was automatically rejected because the vote did not meet the 30% requirement.

Mr. Amestoy asked why Montana would establish a system that discourages people from voting while makes it easier to refuse to vote when an election can be influenced by simply staying home? Exercising a person's most fundamental right to vote should be the influencing factor on elections. All voter should be encouraged to vote in any election by casting their ballot at the polling place or by absentee ballot. Why would Montana establish a system to reward voter apathy and discourage voter participation? After the 2000 Presidential election, it has been emphasized across the nation to "count every vote and that every vote counts". In the case of the school bond election in Sidney, the vote than counted the most were the people who did not bother to vote at all. He encouraged the Committee's support of HB 574.

Bob Vogel, MTSBA, spoke in support of HB 574.

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Opponents' Testimony:

Glen Oppel, MT Association of Realtors, said that the Association is not against school bonds and it believes that the law should defer to the electorate and the democratic process. However, it opposes HB 574 as a representative of the property taxpayer. He said that voter participation requirements are in statute for a reason, and the Committee must distinguish between school bonds and general obligation bonds.

Mr. Oppel said that school bonds can go to the voters at any time during the year whereas a general obligation bond is required to go before the voter in conjunction with a primary or general

election. This is when the people are thinking about their civic duty to vote. If a school bond goes before the voters in March, for example, the bond is put to the voters at a time when they are not thinking about their civic duty. The potential for a low voter turnout is high. It seems prudent to require a certain participation level from the voters to pass a high level of taxation on to property owners. The Association recommends that if the Committee is going to support the idea of striking the participation requirements, it should consider an amendment to require that school bond elections run concurrently with a primary or general election.

Informational Testimony: None.

{Tape: 1; Side: B; Time Counter: 9.2}

Questions from Committee Members and Responses:

SEN. KIM GILLAN, SD 24, asked if current statute included any restriction as to when a bond issue can be held. **Mr. Svee** said that currently, school districts have greater latitude as to when they can run bond issues. They can run bond issues during their school elections in May, or in conjunction with the primary or general election, or by mail-out ballot. HB 574 was amended in the House to limit school bond elections to the general or primary elections and mail-out ballots. **SEN. GILLAN** asked if the school district assumed the cost of the mail-out ballots. **Mr. Svee** said that school districts absorb the cost of a mail-out ballot even if it is held in conjunction with a primary or general election. However, the cost during the primary or general election would be \$30,000 while the mail-out is \$110,000.

{Tape: 1; Side: B; Time Counter: 14.4}

SEN. DANIEL MCGEE, SD 29, asked if under HB 574 as currently written, if one person voted in favor of the bond issue and no one else did, the school bond would pass. **REP. BRANAE** said yes just as it would in a city or county election as well. **SEN. MCGEE** asked why the Legislature would pass HB 574 when it had the potential to increase taxes. **REP. BRANAE** said that the Legislature needs to remember that the voters ultimately make the decision. At times, legislators believe that voter always vote against taxes, but it is also true that many times people vote in favor of schools and support those taxes. Under current law, when someone chooses not to participate in an election, they are actually voting no which he felt gave them more power than the people who actually take part in the election. The people have the right to decide whether they want to vote or not. If they choose not to vote, they are saying that they do not care. The

people who do take part and choose to participate, by majority vote should have the right to decide what happens in a situation.

{Tape: 1; Side: B; Time Counter: 22.5}

SEN. BARKUS asked if there were any requirements in HB 574 as to what lengths a school district must go to advertise and notice an election. **REP. BRANAE** said no, but experience tells that not only in school and city elections, as well as county elections, that it is going to be important for the governmental entities to promote what they are trying to pass or people are not going to pass. **SEN. BARKUS** said that if the Legislature is going to allow a minority to apply a tax to the majority of people who may not vote, there should be sideboards to noticing those people. **REP. BRANAE** said that there would be notification to the public if a bond issue is going to be held. However, he believed that the will of the people speaks.

{Tape: 1; Side: B; Time Counter: 26.0}

Referring to the amended language in SB 574, **SEN. STORY** asked if there was another type of regular election other than a general election. **SEN. RYAN** said that the Great Falls municipal elections are set at a specific time and not run in conjunction with the others. It may be considered a regular election for municipal districts. **SEN. STORY** asked if **Mr. Vogel** was aware of any noticing requirements of bond elections for schools in statute. **Mr. Vogel** said that there were notice provisions as there are with mill levy elections. The boards must meet and set the bond election 40 days prior to the election.

SEN. JERRY BLACK, SD 14, felt that HB 574 would give people who are in favor of the bond issue more power than the "no voters" and a very small group of voters could pass the issue and impose the property tax on all of the property owners within the district. **REP. BRANAE** disagreed. For example, if enough people chose to not vote--less than 30% of the eligible voters participated--the election is moot and fails immediately. By not voting, they are requiring more people, in a sense, to vote yes. **SEN. BLACK** said felt the fact that there needs to be a 30% voter turn out encourages more people to go to the polls.

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SEN. BARKUS asked what is broken with the present system. **REP. BRANAE** said that what is broke is that it is much more difficult for a school district to adequately prepare the public to participate in a democracy where a majority of the people can

make the decision as to whether an issue passes or not. There needs to be a situation created whereby a majority rules.

SEN. DON RYAN, SD 10, asked **REP. BRANAE** to comment in his closing about a situation where people have moved out of an area, but who are still on the voter list as registered voters, and get counted as people who vote "no" and the aspects that weather has on voter turnout.

{Tape: 2; Side: A; Time Counter: 2.7}

Closing by Sponsor:

REP. BRANAE said that voting is a difficult thing. The weather along with many other things play a part in how many people participate in an election. Maybe overtime, society has become less involved in the process than it should be. The Legislature is also looking at an issue of fairness. HB 574 attempts to level the playing field to address that any decision made is determined by the majority vote of the people.

{Tape: 2; Side: A; Time Counter: 4.2}

EXECUTIVE ACTION ON HB 397

Motion/Vote: **SEN. BARKUS** moved that HB 397 BE CONCURRED IN. Motion carried unanimously by voice vote. **SEN. ELLIOTT** voted aye by proxy. **SEN. BARKUS** will carry the bill.

ADJOURNMENT

Adjournment: 4:10 P.M.

SEN. DON RYAN, Chairman

LOIS O'CONNOR, Secretary

DR/lo

Additional Exhibits:

EXHIBIT ([eds48aad0.PDF](#))